Buy-Low Market, Inc. *and* Nesked Palacios. Case 21–CA–173346

September 6, 2018

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN AND KAPLAN

On February 3, 2017, Administrative Law Judge Amita Baman Tracy issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief. The Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The judge found, applying the Board's decisions in *D. R. Horton*, 357 NLRB 2277 (2012), enf. denied in relevant part, 737 F.3d 344 (5th Cir. 2013), and *Murphy Oil USA, Inc.*, 361 NLRB 774 (2014), enf. denied in relevant part, 808 F.3d 1013 (5th Cir. 2015), that the Respondent violated Section 8(a)(1) of the National Labor Relations Act by implementing, maintaining, and enforcing its dispute resolution agreement, formally titled the "Mutual Arbitration Agreement," that requires employees, as a condition of employment, to waive their rights to pursue class or collective actions involving employment-related claims in all forums, whether arbitral or judicial.

Recently, the Supreme Court issued a decision in *Epic Systems Corp. v. Lewis*, 584 U.S. __, 138 S.Ct. 1612 (2018), a consolidated proceeding that included review of court decisions below in *Lewis v. Epic Systems*, 823 F.3d 1147 (7th Cir. 2016), *Morris v. Ernst & Young LLP*, 834 F.3d 975 (9th Cir. 2016), and *Murphy Oil USA, Inc. v. NLRB*, 808 F.3d 1013 (5th Cir. 2015). *Epic Systems* concerned the issue, common to all three cases, whether employer-employee agreements that contain class- and collective-action waivers and stipulate that employment disputes are to be resolved by individualized arbitration violate the National Labor Relations Act. Id. at __, 138 S.Ct. at 1619–1621, 1632. The Supreme Court held that such employment agreements do not violate this Act and that the agreements must be enforced as written pursuant to the Federal Arbitration Act. Id. at __, 138 S.Ct. at 1619, 1632.

The Board has considered the decision and the record in light of the exceptions and briefs. In light of the Supreme Court's ruling in *Epic Systems*, which overrules the Board's holding in *Murphy Oil*, we conclude that the complaint must be dismissed.[1]

ORDER

The complaint is dismissed.

Dated, Washington, D.C. September 6, 2018

John F. Ring, Chairman

Lauren McFerran, Member

Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Alice J. Garfield, Esq., for the General Counsel.
James M. Gilbert, Esq. and *Darren D. Daniels, Esq.,* for the Respondent.
Daniel J. Bass, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

AMITA BAMAN TRACY, Administrative Law Judge. This case is before me on the parties' motion to submit case on stipulation and stipulation of facts (Joint Motion), which I approved on November 1, 2016.[1] Nesked Palacios (Palacios or Charging Party) filed the charge in Case 21–CA–173346 on April 5, 2016. The General Counsel issued the complaint (the complaint) on July 27, 2016.

The complaint alleges that Buy-Low Market, Inc. (Respondent) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by implementing, maintaining, and enforcing a Mutual Arbitration Agreement (the Agreement). Specifically, the complaint alleges Respondent required its employees, as a condition of employment, since about August 17, 2010, to resolve certain employment-related disputes exclusively through individual arbitration rather than through collective or class action. Furthermore, the complaint alleges on August 17, 2010, Respondent required Palacios to sign and be bound to the Agreement as a condition of employment. Finally, the complaint alleges on December 11, 2015, Respondent enforced the Agreement by filing and pursuing a motion to compel arbitration and dismiss class claims in Los Angeles County Superior

[1] We therefore find no need to address other issues raised by the Respondent's exceptions.

[1] Abbreviations used in this decision are as follows: "Jt. Mt." for Joint Motion; "Exh." for exhibit; "par." for paragraph; "GC Br." for General Counsel's brief; and "R. Br." for Respondent's brief.

Court in response to a class action lawsuit filed by Palacios alleging wage-and-hour violations and other violations.

Respondent filed a timely answer on August 10, 2016.

For the reasons that follow, I find that Respondent violated Section 8(a)(1) of the Act when it implemented, maintained, and enforced the Agreement.

On the Joint Motion which consists of the stipulated facts and exhibits, and after considering the briefs filed by the General Counsel and Respondent,[2] I make the following[3]

FINDINGS OF FACT

I. JURISDICTION

Respondent, a California corporation, operates retail grocery stores throughout southern California along with its principle place of business located at 522 East Vermont, Anaheim, California, where it annually derived gross revenues in excess of $500,000 and purchased and received at its stores throughout southern California goods valued in excess of $50,000 from points outside the State of California. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act (Jt. Mt. at par. 3, 4, and 5).

II. ALLEGED UNFAIR LABOR PRACTICES

A. Charging Party's Employment with Respondent

The Charging Party's personnel file contained the Agreement, which he signed on August 17, 2010, when he began working for Respondent. The Charging Party signed the Agreement, along with other on-boarding documents, on or about the date he began working for Respondent. Charging Party's employment with Respondent ended on June 28, 2013 (Jt. Mt. at par. 6).

B. The Agreement: Arbitration Provision

Since August 2010, Respondent implemented and maintains the Agreement (Jt. Mt. at par. 6). The Agreement, a one-page, single spaced document, states in pertinent part:

> In recognition of the fact that differences may arise between Employer and Employee (collectively, the "parties") during or after Employee's employment, [. . .] the Employer and Employee agree as follows:
>
> Agreement to Arbitrate: Designated Claims: The Employer and the Employee agree to resolve through binding arbitration any disputes or claims having anything to do with the Employer's application for employment, employment, or separation from employment with the Employer [. . .].
>
> Arbitrable Claims: Examples of disputes the parties agree to submit for arbitration include, but are not limited to claims for discrimination based on mental or physical disability, religion, national origin, race, age, sex, or any other protected basis under state and federal law [. . .] wrongful termination; [. . .] and all other charges related to any aspect of the employee's employment relation ship [sic] with the Employer. By law, claims such as those involving workers' compensation, unemployment insurance, and wage and hour pay complaints may not be submitted to arbitration, and therefore are not covered by this Agreement. Nothing contained in this agreement shall preclude the filing of an administrative charge/complaint with the United States Equal Employment Opportunity Commission, the California Department of Fair Employment & Housing and/or the National Labor Relations Board. These claims must, however, be arbitrated if they are removed from the appropriate administrative agency's jurisdiction for any reason.
>
> [. . .]
>
> The parties acknowledge this is the entire agreement between them regarding the subject of arbitration and understand that any modification of this Agreement must be in writing and signed by the parties. The parties further acknowledge that they have carefully read this Agreement, understand its terms, and have been afforded an opportunity to consult with counsel of their own choosing before signing it.

(Jt. Mt. at Exh. 4.)

Respondent considered Charging Party and it to be bound to the Agreement (Jt. Mt. at par. 7).

C. Charging Party's Class Action Lawsuit

On July 21, 2015, Charging Party filed a wage-and-hour class action lawsuit against Respondent, entitled: *Nesked Palacios v. Buy-Low Market, Inc.,* et al., Case No. BC-588838, Central Civil West Division of the Superior Court in the State of California, County of Los Angeles (Jt. Mt. at par. 8, Exh. 5).[4]

On September 25, 2015, Respondent demanded that, pursuant to the Agreement, the Charging Party submit his individual claim to arbitration and dismiss his class claims (Jt. Exh. at par. 9, Exh. 6). On October 2, 2015, Charging Party refused (Jt. Mt. at par. 9, Exh. 7).

On December 11, 2015, Respondent sought to enforce the Agreement by filing a motion to compel arbitration of Charging Party's individual claims and dismiss the class claims (Jt. Mt. at par. 10–11, Exh. 8, 10–22).

On May 2, 2016, Judge Kenneth R. Freeman of the Superior Court of the State of California, County of Los Angeles, granted Respondent's motion to compel arbitration, struck the class allegations and declined to enforce the class claims in arbitration. Charging Party did not appeal the dismissal of the class claims with the California Court of Appeals (Jt. Mt. at par. 12, 14).

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[2] The Charging Party did not file a posthearing brief but instead joined the General Counsel's brief.

[3] Although I have included several citations to the record to highlight particular stipulations or exhibits, I emphasize that my findings and conclusions are based not solely on the evidence specifically cited, but rather are based on my review and consideration of the entire record.

[4] Respondent in this unfair labor practice complaint is limited to Buy-Low Market, Inc., and does not include any additional plaintiffs named in the Superior Court proceedings.

III. ANALYSIS

Respondent's Agreement Violates Section 8(a)(1) of the Act

The complaint alleges that since August 2010, Respondent has required employees, as a condition of employment, to be bound by the Agreement which requires individual arbitration proceedings thereby violating Section 8(a)(1) of the Act. The parties stipulated that Palacios signed the Agreement in August 2010, and Respondent considered Palacios and it to be bound by the Agreement. Respondent admits that it has maintained and enforced the Agreement with regard to Palacios.

Respondent, however, denies that signing the Agreement was a mandatory condition of employment, and that the General Counsel failed to prove as such. Respondent's argument is without merit. Based on the exhibits submitted by the parties in the Joint Motion, it is clear that Charging Party signed the Agreement along with other on-boarding documents on or about his first day of employment with Respondent.[5] Moreover, this Agreement does not clarify whether it is mandatory or optional. When being asked to sign the Agreement, at the start of employment, an employee would not likely refuse to sign. Regardless, the Board has stated that an employer violates the Act whether or not an arbitration agreement is mandatory or voluntary. The Board reasoned that even a voluntary arbitration agreement, or one that has an opt-out provision, requires employees to prospectively waive their Section 7 right which is unlawful. *On Assignment Staffing Services*, 362 NLRB No. 189 (2015). Thus, I find that Respondent imposed a mandatory rule, and as such the Agreement should be evaluated in the same manner as any workplace rule. See *D. R. Horton, Inc.*, 357 NLRB 2277 (2012), enfd. denied in relevant part 737 F.3d 344 (5th Cir. 2013); *NLRB v. Murphy Oil USA, Inc.*, 361 NLRB 774 (2014), enfd. denied in relevant part 808 F.3d 1013 (5th Cir. 2015), cert. granted, 2017 WL 125666 (Jan. 13, 2017).[6]

Section 8(a)(1) of the Act provides that it is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act. The rights guaranteed in Section 7 include the right "to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . ." The Board has consistently held that collective legal action involving wages, hours, and/or working conditions is protected concerted activity under Section 7. See, e.g., *Spandsco Oil & Royalty Co.*, 42 NLRB 942, 949–950 (1942); *United Parcel Service*, 252 NLRB 1015, 1018, 1022 fn. 26 (1980), enfd. 677 F.2d 421 (6th Cir. 1982); *D. R. Horton*, supra at 2274.

In *Murphy Oil USA*, the Board reaffirmed its ruling in *D. R. Horton*, in which it held that mandatory arbitration agreements which preclude the filing of joint, class, or collective claims addressing wages, hours, or other working conditions in any forum, arbitral or judicial, is protected concerted activity and unlawfully restrict employees' Section 7 rights, thus violating Section 8(a)(1) of the Act.

Furthermore, the Board held that Section 8(a)(1) of the Act is violated when an employer requires its employees to agree to resolve all employment-related claims through individual arbitration. Mandatory arbitration agreements which bar employees from bringing joint, class, or collective actions regarding the workplace in any forum restrict employees' substantive right established by Section 7 of the Act to improve their working conditions through administrative and judicial litigation. *Countrywide Financial Corp.*, 362 NLRB No. 165, slip op. at 4 (2015) (Board made clear in *D. R. Horton*, supra at 2284, that employers are "free to insist" that employees arbitrate their employment claims and to require that the "*arbitral* proceedings be conducted on an individual basis," but only "[s]o long as [they left] open an judicial forum for class and collective claims . . ." (emphasis in original)).

Respondent argues that the Agreement does not expressly preclude class or collective action. I agree that the Agreement does not explicitly prohibit class or collective action. However, Respondent, in its Superior Court filings, argues that because the Agreement does not authorize class arbitration, the Charging Party may only arbitrate his claims individually and the class claims dismissed (Jt. Mt. Exh. 8). Respondent cannot have it both ways—in this forum argue that class or collective action is not expressly *precluded* but then argue in another forum that since the Agreement does not *explicitly* permit such collective or class action the Charging Party may only pursue his claims individually. In accordance with its position in the Superior Court action, Respondent moved to compel individual arbitration of Charging Party's claims. The Act provides that employees may "join together to pursue workplace grievances, including through litigation." *D. R. Horton*, supra at 2278. Furthermore, the Board found there is no conflict between the Act and the Federal Arbitration Act as long as "the employer leaves open a judicial forum for class and collective claims [. . .]." Id. at 2288. Respondent, by taking the position in Charging Party's class action claim that the Agreement does not permit class claims as it was not explicitly stated, foreclosed the possibility of pursuing collective and/or class action litigation in any other forum. Thus, contrary Respondent's argument, the Agreement precludes class or collective action.

Furthermore, as the majority reaffirmed in *Murphy Oil*, "the NLRA does not create a right to class certification or the equivalent, but as the *D. R. Horton* Board explained, it does create a right to *pursue* joint, class, or collective claims if and as availa-

[5] In addition, since Respondent presented Palacios with the Agreement along with his other on-boarding documents, it is more likely than not, that other employees signed the Agreement at least on or after this time period. Palacios is unlikely to be the only employee who signed the Agreement and Respondent's assertion that the General Counsel failed to present evidence of any other employee signing the Agreement is disingenuous. However, even if Palacios is the only employee at Respondent to sign the Agreement, the Agreement remains unlawful for the reasons set forth in this decision.

[6] On January 13, 2017, the Supreme Court granted certiorari in *NLRB v. Murphy Oil USA, Inc.*, along with *Epic Systems Corp. v. Lewis*, 823 F.3d 1147 (7th Cir. 2016), cert. granted 2017 WL 125664 (January 13, 2017) and *Ernst & Young, et al. v. Morris*, 834 F.3d 975 (9th Cir. 2016), cert. granted, 2017 WL 125665 (Jan. 13, 2017). These three cases present the issue of whether arbitration agreements that bar employees from pursuing work-related claims on a collective or class basis in any forum violates Sec. 8(a)(1) of the Act. Unless the Supreme Court decides otherwise, I am bound by Board precedent.

ble, without the interference of an employer-imposed restraint." *Murphy Oil*, supra, slip op. at 2 (citing *D. R. Horton*, supra, at 2286 fn. 24). Here, Respondent's Agreement, as a condition of employment, precludes employees from pursuing claims concertedly and thus "amounts to a prospective waiver of a right guaranteed by the NLRA." *Murphy Oil*, supra, slip op. at 9 (citing *National Licorice Co. v. NLRB*, 309 U.S. 350, 361 (1940), and *J. I. Case Co. v. NLRB*, 321 U.S. 332, 337 (1944)). This preclusion infringes on employees' Section 7 rights.

When evaluating whether a rule, including an arbitration provision, violates Section 8(a)(1), the Board applies the test set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). See *U-Haul Co. of California*, 347 NLRB 375, 377 (2006), enfd. 255 Fed.Appx. 527 (D.C. Cir. 2007); *D. R. Horton*; *Murphy Oil*; *Cellular Sales of Missouri*, 362 NLRB No. 27 (2015). Under *Lutheran Heritage*, the first inquiry is whether the rule explicitly restricts activities protected by Section 7. If it does, the rule is unlawful. If it does not, the violation is dependent upon a showing of one of the following: (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to [Section 7] activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights. *Lutheran Heritage*, 343 NLRB at 647. The Board in *D. R. Horton* and *Murphy Oil* found that mandatory arbitration policies expressly violated employees' rights to engage in protected concerted activity under the *Lutheran Heritage* analysis. See also *Brinker International Payroll Co.*, 363 NLRB No. 54 (2015). The Board held that if an arbitration policy is required as a condition of employment, then that rule violates Section 8(a)(1) of the Act if employees would reasonably believe the policy or rule interferes with their ability to file a Board charge or access to the Board's processes, even if policy or rule does not expressly prohibit access to the Board. *Cellular Sales*, supra, slip op. 1, fn. 4.

Here, Respondent implemented and maintained the Agreement as a condition of employment since August 2010. The Agreement prohibits employees from pursuing employment-related claims on a class or collective basis. Thus, I find that the Agreement was a mandatory rule imposed by Respondent as a condition of employment and precludes the right to pursue concerted legal action violating Section 8(a)(1) of the Act. See *D. R. Horton*, supra at 2280; *Murphy Oil*, supra, slip op. at 24. The Agreement requires employees to agree to pursue any dispute they have against Respondent solely through individual arbitration thereby violating Section 8(a)(1) of the Act.

In addition, it is well-established that an employer's enforcement of an unlawful rule, such as the Agreement, independently violates Section 8(a)(1). See *Murphy Oil*, supra, slip op. at 19–21. By asserting the Agreement as an affirmative defense in Charging Party's wage-and hour class action lawsuit, Respondent enforced its arbitration policy to compel Palacios to arbitrate his claim on an individual basis. Respondent's filing of a motion to compel arbitration and dismiss class claims violated Section 8(a)(1) as it invoked an unlawful arbitration policy to reject an employee's class action lawsuit. Respondent's action is similar to the factual scenario found unlawful by the Board in *Murphy Oil*. Accordingly, Respondent also violated Section 8(a)(1) when it enforced the unlawful rule.

Respondent's Additional Affirmative Defenses

1. Charging Party's charge in this matter is not untimely

Section 10(b) of the Act provides that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge. . . ." Respondent argues that Charging Party's unfair labor practice charge, filed on April 5, 2016, was untimely as Respondent initially demanded on September 25, 2015, that Charging Party dismiss his class complaint. However, Respondent continued to maintain and enforce the Agreement within the 6-month period prior to the filing of the charge in this case. Accordingly, despite the fact that Charging Party signed the Agreement, and Respondent initially enforced the Agreement outside the statute of limitations period, this matter is not precluded by Section 10(b) of the Act. The Board has long held under these circumstances a rule, such as the Agreement, constitutes a continuing violation that is not time barred by Section 10(b). See *PJ Cheese Inc.*, 362 NLRB No. 177, slip op. at 1 (2015); *Neiman Marcus Group*, 362 NLRB No. 157, slip op. at 2 and fn. 6 (2015); *Cellular Sales*, supra, slip op. at 2 and fn. 7 (2015).

2. The doctrines of collateral estoppel and res judicata are not applicable

Respondent argues that Charging Party is attempting to relitigate the issue of whether he can proceed in court as a class action and is merely forum shopping. Respondent raises the doctrines of collateral estoppel and res judicata as barring Charging Party's requested relief. Respondent argument has no merit. Significantly, the Board was not a party to Palacios' class action complaint. The Board has consistently held that court decisions in private litigation are not binding on the Board under the doctrines of res judicata or collateral estoppel. See *UnitedHealth Group, Inc.*, 363 NLRB No. 134 (2016); *Bloomingdales, Inc.*, 363 NLRB No. 172, slip op. at 4 fn. 8 (2016), citing *Field Bridge Associates*, 306 NLRB 322 (1992), enfd. 982 F.2d 845, 850 (2d Cir. 1993), cert denied 509 U.S. 904 (1993) ("The Board adheres to the general rule that if the Government was not a party to the prior private litigation, it is not barred from litigating an issue involving enforcement of Federal law which the private plaintiff has litigated unsuccessfully."). Hence, Respondent's argument fails.

3. Respondent's "savings clause" defense is without merit

Respondent argues that the Agreement specifically precludes Board charges or complaints which distinguish its arbitration agreement from those found unlawful in *D. R. Horton* and *Murphy Oil*. Respondent essentially created a "savings clause." In *SolarCity Corp.*, 363 NLRB No. 83, slip op. at 6 (2015), which has a similar provision, the Board, citing *Ingram Book Co.*, 315 NLRB 515, 516 fn. 2 (1994) stated, "[r]ank-and-file employees do not generally carry lawbooks to work or apply legal analysis to company rules as do lawyers, and cannot be expected to have the expertise to examine company rules from a legal standpoint." "With this principle in mind, the Board routinely has found insufficient language in workplace rules purporting to except, or "save," employees' legal rights to re-

strictions on their conduct. This is so even where such exceptions as found in the Agreement referred to the "NLRA" or "the National Labor Relations Act." *SolarCity Corp*, supra. Moreover, Respondent also indicates in the Agreement that employee disputes concerning any part of his or her employment shall be addressed in binding arbitration which creates confusion for employees as to which disputes would be handled via binding arbitration or Board charge/unfair labor practice. The Agreement is vague and leaves employees questioning and not risking violating the rule by exercising Section 7 rights. Id. Board law is settled that ambiguous rules are construed against the employer. Thus, Respondent's claim is without merit.

In sum, Respondent's Agreement violates Section 8(a)(1) of the Act as Respondent implemented, maintained and enforced an unlawful rule.

CONCLUSIONS OF LAW

1. Respondent is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent violated Section 8(a)(1) of the Act by implementing, maintaining and enforcing a Mutual Arbitration Agreement which required employees to resolve employment-related disputes exclusively through individual arbitration and, though not expressly, but in practice, required them to relinquish any right they have to resolve such disputes through collective or class action.

3. Respondent violated Section 8(a)(1) of the Act by seeking to enforce its unlawful mutual arbitration agreement by filing a motion in Superior Court compelling individual arbitration and dismissing Charging Party's class action.

4. The unfair labor practices committed by Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, consistent with the Board's decisions in *D. R. Horton* and *Murphy Oil*, I shall order it to cease and desist there from and to take certain affirmative action designed to effectuate the policies of the Act.

As I have concluded that the Agreement is unlawful, the recommended Order requires that Respondent revise or rescind it to make clear to employees that the Agreement does not constitute a waiver of their right to maintain employment-related joint, class, or collective actions in all forums. Respondent shall notify all current and former employees since August 2010 who were required to sign the Agreement that it has been rescinded or revised, and if revised, provide them a copy of the revised Agreement.

Respondent shall be required to reimburse Charging Party for any reasonable attorneys' fees and litigation expenses, with interest, to date and in the future, directly related to opposing Respondent's filing its motion to compel arbitration of Charging Party's individual claims and dismiss the class claims in *Nesked Palacios v. Buy-Low Market, Inc., et al.*, Case No. BC-588838, Central Civil West Division of the Superior Court in the State of California, County of Los Angeles. Determining the applicable rate of interest on the reimbursement will be as outlined in *New Horizons*, 283 NLRB 1173 (1987). Interest on all amounts due to Charging Party shall be computed on a daily basis as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

Respondent shall also be required to notify the Central Civil West Division of the Superior Court in the State of California, County of Los Angeles, Case No. BC-588838, that it has rescinded or revised the Agreement upon which it based its motion to compel arbitration of Charging Party's individual claims and dismiss the class claims, and inform the Superior Court that it no longer opposes the lawsuit on the basis of the Agreement.

Respondent shall post a notice in all locations where the Agreement was in effect. See, e.g., *U-Haul of California*, supra, fn. 2; *D. R. Horton*, supra at 2289; *Murphy Oil*, supra, slip op. at 22. Respondent is also ordered to distribute appropriate remedial notices to its employees electronically, such as by email, posting on an intranet or internet site, and/or other appropriate electronic means, if it customarily communicates with its employees by such means. *J. Picini Flooring*, 356 NLRB 11 (2010).

On these findings of fact and conclusions of law and the entire record, I issue the following recommended.[7]

ORDER

Respondent, Buy-Low Market, Inc., Anaheim, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Implementing, maintaining and/or enforcing a Mutual Arbitration Agreement that requires employees to waive the right to maintain employment-related class or collective actions in all forums, whether arbitral or judicial.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the Mutual Arbitration Agreement in all its forms, or revise it in all its forms to make clear that the Mutual Arbitration Agreement does not constitute a waiver of employees' right to initiate or maintain employment-related joint, class, or collective actions in all forums.

(b) Notify all current and former employees since August 2010 who were required to sign or otherwise be bound to the Mutual Arbitration Agreement in any form that it has been rescinded, or revised, and, if revised, provide them with a copy of any revised agreement, and further notify them that the Mutual Arbitration Agreement will not be enforced in a manner that compels them to waive their rights to maintain employment-related joint, class or collective action in all forums.

(c) Notify the Central Civil West Division of the Superior Court in the State of California, County of Los Angeles, Case No. BC-588838, that it has rescinded or revised the Mutual Arbitration Agreement upon which it based its motion to com-

[7] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

pel arbitration of Charging Party's individual claims and dismiss the class claims, and inform the Superior Court that it no longer opposes the lawsuit on the basis of the Mutual Arbitration Agreement.

(d) In the manner set forth in this decision, reimburse Nesked Palacios in Case No. BC-588838 for any reasonable attorneys' fees and litigation expenses that he may have incurred in opposing Respondent's motion to compel arbitration of Charging Party's individual claims and dismiss the class claims.

(e) Within 14 days after service by the Region, post at its facility in Anaheim, California, copies of the attached notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since February 1, 2015.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, D.C. February 3, 2017

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT implement, maintain and/or enforce an arbitration agreement that requires employees to waive the right to maintain employment-related class or collective action in all forums, whether arbitral or judicial.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind the arbitration agreement in all its forms or revise it in all of its forms to make clear that the arbitration agreement does not constitute a waiver of your rights to maintain employment-related joint, class, or collective action in all forums.

WE WILL notify all current and former employees who were required to sign or otherwise become bound to the arbitration agreement in all its forms that it has been rescinded or revised and, if revised, WE WILL provide them a copy of the revised policy.

WE WILL notify the court in which Nesked Palacios filed his class action lawsuit that we have rescinded or revised the arbitration agreement upon which we based our motion to compel arbitration of Nesked Palacios' individual claims and dismiss the class claims, and WE WILL inform the court that we no longer oppose Nesked Palacios' class action lawsuit on the basis of that arbitration agreement.

WE WILL reimburse Nesked Palacios for any reasonable attorneys' fees and litigation expenses that he may have incurred in opposing our motion to compel arbitration of Nesked Palacios' individual claims and dismiss the class claims.

BUY-LOW MARKET, INC.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/21-CA-173346 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."